

# **Exhibit D**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MANBRO ENERGY CORPORATION,  
individually and on behalf of  
all those similarly situated,

Plaintiffs,

vs.

Case No.  
20 Civ. 3773 (LGS)

CHATTERJEE ADVISORS, LLC,  
CHATTERJEE FUND MANAGEMENT, LP,  
CHATTERJEE MANAGEMENT COMPANY,  
d/b/a THE CHATTERJEE GROUP, and  
PURNENDU CHATTERJEE,

Defendants.

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\*\*\* CONFIDENTIAL \*\*\*

VIDEOTAPED DEPOSITION OF BRADLEY S. SMITH

Via Remote Videoconference

Thursday, April 22, 2021

Stenographically Reported By:

Paula S. Raskin, CSR-4757

Job No. 192804

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2 A. Above 25?

3 Q. Yes.

4 A. I'm sorry, could you -- you said

5 25 grand?

6 Q. 25 million.

7 A. Okay, 25 million. Manbro would.

8 Well, no, I don't know what would happen at that

9 point. We could -- we have the ability under

10 the Manbro documents to request contributions

11 from the various shareholders of Manbro.

12 Q. So you had earlier described that

13 Manbro Energy has approximately 25 million

14 dollars in net worth. How much of that is

15 liquid or cash?

16 A. Probably not very much at this point.

17 Q. Can you estimate for me how much is

18 liquid or cash?

19 A. No, I don't -- I don't have those --

20 I don't have those numbers.

21 Q. Do you know if it's above or lower

22 than 1 million dollars?

23 A. I would assume that we have cash of

24 less than 1 million dollars in Manbro. We

25 typically don't keep a lot of cash.

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2 the existing partners or we have lines of

3 credit.

4 Q. Has anybody discussed doing capital

5 calls from the existing partners in order to

6 finance this litigation with the partners?

7 A. No.

8 Q. Do the partners have to provide

9 capital calls if one is made?

10 A. Yes.

11 Q. Nondiscretionary?

12 A. Nondiscretionary.

13 Q. Who gets to decide whether to make a

14 capital call?

15 A. Who gets to decide whether to make a

16 capital call?

17 Q. Yes.

18 A. It would be the board of Manbro.

19 Q. Who's on the board of Manbro?

20 A. I'm not sure of the exact members.

21 Myself, I think Jon McCloskey's on, Jim Fox is

22 probably on. It's officers of Parkwood.

23 Q. Has the board of Manbro Energy

24 discussed this lawsuit at board meetings?

25 A. Yes.

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2 Q. How has Manbro Energy been financing

3 or paying the legal fees for this lawsuit given

4 less than 1 million dollars in cash on hand?

5 A. The fees are being paid as cash comes

6 in from other sources. It is in liquidation

7 mode and we have the original money that they

8 sent us.

9 Q. What does that mean that you have the

10 original money --

11 A. Well, the 2.3 million dollars that

12 they tried to buy us out with.

13 Q. So you're using the 2.3 million

14 dollar final distribution to finance part of the

15 legal fees? Is that correct?

16 A. Yes.

17 Q. And how much of the 25 million

18 dollars or so in assets of Manbro Energy is in

19 illiquid, unmarketable assets?

20 A. Most of it is in illiquid and

21 unmarketable assets.

22 Q. How does Manbro Energy plan to

23 finance this lawsuit in the event that it cannot

24 liquidate assets?

25 A. We will either do a capital call from

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2 Q. And are those board meetings -- do

3 you keep minutes of those board meetings?

4 A. Not at this point, no.

5 Q. Okay. So does anybody take notes of

6 board meetings?

7 A. No.

8 Q. How many board meetings do you have a

9 year?

10 A. I'm not certain. We don't

11 necessarily have formal board meetings, not in

12 the sense that you think. It's an investment,

13 in wind-down mode.

14 Q. When was the first time you all

15 discussed the financing of this lawsuit at a

16 board meeting?

17 A. Financing of this lawsuit has never

18 been talked about at a board meeting.

19 Q. Has there been a discussion with the

20 other board members, Mr. McCloskey and Mr. Fox,

21 about issuing a capital call if needed from the

22 existing partners of Manbro Energy?

23 A. No.

24 Q. So just so I understand, when you

25 stated that the board would issue a capital

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2 A. I believe they did.

3 Q. And what, if anything, did Emissary

4 Holdings do to obtain such -- attempt to obtain

5 such information about other affected limited

6 partners?

7 A. I do not know.

8 MR. WEITZMAN: Let's turn to

9 Exhibit 84, which is Defendants'

10 Exhibit 12.

11 (DEFENDANTS' EXHIBIT 12 MARKED

12 FOR IDENTIFICATION at 1:11 p.m.)

13 BY MR. WEITZMAN:

14 Q. And this again is a printout from the

15 Emissary Holdings website, and if you turn to

16 Page 3 at the bottom, it says "Case Studies."

17 And then on Page 4, the final tab of this case

18 study, and it says:

19 "Outcome: Our client was made an

20 insufficient settlement offer, so opted to

21 launch a class action in the Southern

22 District of New York. Emissary continues

23 to advise them on that."

24 Did I read that correctly?

25 A. Yes.

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2 way that doesn't call for the revelation of

3 a privileged legal discussion, I'll

4 consider it, but that question I am

5 instructing him not to answer.

6 BY MR. WEITZMAN:

7 Q. Are you going to follow your

8 counsel's advice, Mr. Smith?

9 A. Yes.

10 Q. Let me ask it another way then.

11 Did Emissary Holdings suggest to you

12 that Parkwood and Manbro consider a class action

13 lawsuit?

14 You may answer.

15 THE WITNESS: Mark, would you like me

16 to answer?

17 MR. MCDONALD: Yes, you can answer

18 that question as long as you in doing so do

19 not reveal the contents of any

20 communications that you had with counsel or

21 that were made in the presence of counsel,

22 in a room with counsel.

23 BY MR. WEITZMAN:

24 Q. Can you answer the question,

25 Mr. Smith?

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2 Q. Was Emissary Holdings involved in the

3 decision to quote/unquote launch a class action

4 in the Southern District of New York?

5 A. I don't know that they were -- they

6 weren't -- they had input, but I don't -- they

7 were not the decision makers.

8 Q. My question, though, is not whether

9 they were the decision makers, it's whether they

10 were involved in the decision.

11 A. I believe they were in the room.

12 Q. And what -- did Emissary Holdings,

13 were they the ones who suggested that you file

14 this as a class action?

15 MR. MCDONALD: I'll object actually

16 to this question and instruct the witness

17 not to answer to the extent that the answer

18 would reveal the contents of a conversation

19 in a room if that involves lawyers about

20 this lawsuit, so...

21 MR. WEITZMAN: Are you instructing

22 him not to answer?

23 MR. MCDONALD: Yes, so I'm

24 instructing him not to answer that

25 question. If you can ask the question in a

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2 A. I don't believe Emissary made any

3 recommendations.

4 Q. Parkwood -- is it fair to say that

5 Parkwood understood that a class action would

6 have greater potential financial ramifications

7 to defendants than just pursuing a single

8 lawsuit on behalf of Manbro Energy?

9 A. Yes.

10 Q. And is it fair to say that part of

11 the reason why Manbro decided to pursue this

12 lawsuit as a class action was to impose the

13 greatest threat of financial harm to defendants?

14 MR. MCDONALD: I object to that

15 question.

16 BY MR. WEITZMAN:

17 Q. You may answer, sir.

18 A. Obviously.

19 Q. And is it fair to say that Parkwood

20 and Manbro never reached out to any of the other

21 limited partner investors before asking to sue

22 on their behalf, correct?

23 MR. MCDONALD: Object to the form.

24 A. Manbro or Parkwood could not reach

25 out to the other investors because we did not

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| <p style="text-align: right;">Page 150</p> <p>1 CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2 A. I'm -- I'm not questioning whether</p> <p>3 Emissary requested this or whether Manbro did or</p> <p>4 what Matt did. I'm simply saying I don't have</p> <p>5 any knowledge of this.</p> <p>6 Q. To your knowledge, did Parkwood</p> <p>7 authorize Emissary Holdings to communicate with</p> <p>8 the press on behalf of Manbro and Parkwood?</p> <p>9 A. Yeah, I think we did.</p> <p>10 Q. Okay. Tell me about that</p> <p>11 authorization. When --</p> <p>12 MR. MCDONALD: Avi, can you explain</p> <p>13 to me which deposition topic this falls</p> <p>14 under because I'm not seeing it, and I</p> <p>15 really don't think that this is within the</p> <p>16 scope of the deposition that you noticed.</p> <p>17 MR. WEITZMAN: Well, it goes to</p> <p>18 Parkwood's roles, duties, responsibilities,</p> <p>19 and authorities, first of all, and it also</p> <p>20 goes into Topic 6, the investigation,</p> <p>21 assessment, analysis, evaluation, research,</p> <p>22 due diligence, monitoring or other review</p> <p>23 of defendants performed by you or on your</p> <p>24 behalf. It goes into any number of topics</p> <p>25 that concern how this case has been</p> | <p style="text-align: right;">Page 151</p> <p>1 CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2 prosecuted, and I'd just --</p> <p>3 MR. MCDONALD: In other words, it</p> <p>4 doesn't go into any topic. So I suggest</p> <p>5 that we either move on -- you know, I</p> <p>6 reserve the right to strike all of this</p> <p>7 testimony as outside of the scope of the</p> <p>8 30(b)(6) notice that you and we discussed</p> <p>9 and negotiated before this deposition.</p> <p>10 It's not appropriate to then ask a</p> <p>11 bunch of questions of a 30(b)(6) witness,</p> <p>12 particularly when you insisted that this</p> <p>13 would be separate and apart from any</p> <p>14 individual witness on behalf of Mr. Smith,</p> <p>15 but --</p> <p>16 MR. WEITZMAN: I've been very clear</p> <p>17 that my view is that this doesn't obviate</p> <p>18 an individual deposition of Mr. Smith, but</p> <p>19 it doesn't also preclude asking --</p> <p>20 MR. MCDONALD: You don't get two</p> <p>21 depositions of the same witness, okay?</p> <p>22 That's not how it works.</p> <p>23 MR. WEITZMAN: Mr. McDonald, can I</p> <p>24 finish?</p> <p>25 This doesn't obviate my right to ask</p> |
| <p style="text-align: right;">Page 152</p> <p>1 CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2 Mr. Smith questions that he may know the</p> <p>3 answers to in his personal capacity.</p> <p>4 BY MR. WEITZMAN:</p> <p>5 Q. So let me ask you again, sir --</p> <p>6 MR. WEITZMAN: And I believe this is</p> <p>7 covered by a number of topics, and we can</p> <p>8 deal with that afterwards if you want to</p> <p>9 move to strike.</p> <p>10 BY MR. WEITZMAN:</p> <p>11 Q. When did you or Parkwood authorize</p> <p>12 Emissary Holdings to communicate with the press</p> <p>13 on your behalf?</p> <p>14 MR. MCDONALD: Object to the form.</p> <p>15 THE WITNESS: Am I allowed to answer?</p> <p>16 MR. MCDONALD: You can answer that.</p> <p>17 A. I don't know that Parkwood did do</p> <p>18 that. Parkwood may have. Jon may have said</p> <p>19 something, but I do not know.</p> <p>20 BY MR. WEITZMAN:</p> <p>21 Q. Did you participate in any</p> <p>22 conversation in which Jon McCloskey authorized</p> <p>23 Emissary Holdings to communicate with the press?</p> <p>24 A. No.</p> <p>25 Q. Okay. Was there an effort on the</p>   | <p style="text-align: right;">Page 153</p> <p>1 CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2 part of Manbro to broaden the press outreach</p> <p>3 regarding this lawsuit in order to put pressure</p> <p>4 on Chatterjee to settle this lawsuit?</p> <p>5 MR. MCDONALD: Objection.</p> <p>6 A. I'm sure there was.</p> <p>7 BY MR. WEITZMAN:</p> <p>8 Q. Is it fair to say that there was an</p> <p>9 effort on the part of Parkwood and Manbro to get</p> <p>10 press coverage of this lawsuit in order to cause</p> <p>11 Chatterjee some reputational harm?</p> <p>12 MR. MCDONALD: Objection.</p> <p>13 A. Yes.</p> <p>14 BY MR. WEITZMAN:</p> <p>15 Q. What is it that Emissary Holdings, to</p> <p>16 your knowledge, told the media and the press</p> <p>17 regarding Dr. Chatterjee?</p> <p>18 A. I don't know.</p> <p>19 MR. WEITZMAN: Let's take -- we'll</p> <p>20 move on for now. I'm reserving the right</p> <p>21 to come back to this.</p> <p>22 BY MR. WEITZMAN:</p> <p>23 Q. Manbro's an accredited investor,</p> <p>24 correct?</p> <p>25 A. At the time of the investment, it</p>  |

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| <p style="text-align: right;">Page 206</p> <p>1 CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2 Q. This is a document that Manbro kept</p> <p>3 and maintained in the -- I'm sorry, that</p> <p>4 Parkwood kept and maintained in the ordinary</p> <p>5 course, correct?</p> <p>6 A. Yes.</p> <p>7 Q. So if you look at the first bullet</p> <p>8 point, in 2003 it was reported to Parkwood, and</p> <p>9 it said:</p> <p>10 "Overall net asset value declined</p> <p>11 some 36 percent in 2002, mainly as the</p> <p>12 result of marking down the telecom ventures</p> <p>13 as well as the value of the aircraft, 727s</p> <p>14 and A300s, to zero since the amount of debt</p> <p>15 was greater than the likely resale value of</p> <p>16 the aircraft. This markdown left the</p> <p>17 petrochemical plant, Haldia, some</p> <p>18 80 percent of the portfolio's remaining</p> <p>19 value."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. So as we just discussed, not only did</p> <p>23 Manbro and Parkwood understood that these were</p> <p>24 risky investments without any guarantees,</p> <p>25 several of the investments actually were written</p> | <p style="text-align: right;">Page 207</p> <p>1 CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2 down to zero, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And when -- what does it mean to</p> <p>5 write down an asset to zero?</p> <p>6 A. That means that you believe that the</p> <p>7 entire value has gone away.</p> <p>8 Q. And so a multiple of WPPE's</p> <p>9 investments had debt greater than the value of</p> <p>10 the asset, right?</p> <p>11 A. I'm not familiar -- all that familiar</p> <p>12 with the assets, but if that's what the memo</p> <p>13 says, yes, yes, that's -- that would make sense.</p> <p>14 Q. Now, in 2003, there was an</p> <p>15 understanding, sir, that the Haldia investment</p> <p>16 comprised 80 percent of the remaining value of</p> <p>17 WPPE, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And is it fair to say that Manbro and</p> <p>20 Parkwood understood that the Haldia investment</p> <p>21 itself was a very risky investment?</p> <p>22 A. Yes.</p> <p>23 Q. And, in fact -- let me withdraw that.</p> <p>24 I know it says the title of the</p> <p>25 company's Manbro Energy.</p>  |
| <p style="text-align: right;">Page 208</p> <p>1 CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2 Did Manbro have any prior history in</p> <p>3 the petrochemical industry?</p> <p>4 A. Not of that nature, no.</p> <p>5 Q. Did Manbro have any history of</p> <p>6 investments in India?</p> <p>7 A. I am not certain if we had other</p> <p>8 investments in India.</p> <p>9 Q. There was an understanding, sir, that</p> <p>10 Haldia had a very large debt burden, correct, as</p> <p>11 of (audio distortion)?</p> <p>12 (Reporter clarification.)</p> <p>13 Q. 2003 Haldia had a very large debt</p> <p>14 burden, correct, sir?</p> <p>15 A. Is that what it says here?</p> <p>16 Q. You can read the second bullet point</p> <p>17 to yourself.</p> <p>18 A. Okay.</p> <p>19 Q. Is that correct? Is that Parkwood's</p> <p>20 understanding in 2003?</p> <p>21 A. Yes.</p> <p>22 Q. And, in fact, the debt burden was so</p> <p>23 extensive that it required a markdown of the net</p> <p>24 asset value of the asset, correct?</p> <p>25 A. Yes.</p>   | <p style="text-align: right;">Page 209</p> <p>1 CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2 Q. And in the third bullet point, it</p> <p>3 says, quote/unquote:</p> <p>4 "Because Mr. Chatterjee has a great</p> <p>5 deal of his personal net worth in this</p> <p>6 asset, perhaps 50 percent, he has been</p> <p>7 spending 70 percent of his time in India</p> <p>8 working on restructuring the debt.</p> <p>9 Naturally the lenders are reluctant to do</p> <p>10 so since they would like to gain control of</p> <p>11 this asset. Winston, with three-sevenths</p> <p>12 of the equity and another group close to</p> <p>13 Chatterjee with one-seventh, have been</p> <p>14 working together, but it looks as though</p> <p>15 Chatterjee himself will have to inject more</p> <p>16 equity."</p> <p>17 Did I read that correctly?</p> <p>18 A. That is what's written, yes.</p> <p>19 Q. Fair to say, sir, that Parkwood</p> <p>20 understood that Chatterjee was investing a lot</p> <p>21 of his own personal time and resource in an</p> <p>22 effort to improve the position of Haldia, right?</p> <p>23 A. At this particular time, yes.</p> <p>24 Q. And that effort would have benefited</p> <p>25 investors like you all in WPPE, right?</p> |

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2 MR. MCDONALD: Objection.

3 A. Yes.

4 BY MR. WEITZMAN:

5 Q. And according to this paragraph,

6 Parkwood was aware, sir, that the lenders were

7 reluctant to restructure the debt, right?

8 A. Yes.

9 Q. And one of the reasons why lenders

10 are reluctant to restructure debt is because

11 they want to take control of the asset

12 themselves, right?

13 A. Yes.

14 Q. Is it fair to say that Parkwood and

15 Manbro Energy understood at this time in 2003

16 that there was a risk that the lenders would

17 take control of the asset themselves?

18 A. Yes.

19 Q. And if the lenders had taken control

20 of the asset themselves, what would that have

21 done to Manbro Energy's investment in WPPE?

22 A. Probably would have wiped it out.

23 Q. So Chatterjee in 2003 was working

24 very hard, in Parkwood's knowledge, to prevent

25 that from happening, correct?

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2 Do you see that?

3 A. Yes.

4 Q. Does the fact that Harold Ehrlich

5 said to you -- said to Parkwood that the

6 investment could be sold at a steep discount

7 from present NAV, does that indicate -- does

8 that refresh your recollection that in fact

9 Parkwood could have opted to sell its investment

10 or withdraw its investment, redeem, from WPPE?

11 MR. MCDONALD: Objection.

12 A. That -- that statement does not

13 necessarily mean that, and it certainly does not

14 mean that in our context.

15 It is likely that Harold was thinking

16 that -- or it's possible that Harold was

17 thinking that this could have been sold to a

18 secondary buyer, this could have been sold to a

19 third party. To require that would do a

20 substantial discount, but this doesn't mean that

21 we had the right to withdraw at a discount.

22 BY MR. WEITZMAN:

23 Q. If you go up to the next bullet

24 point, the fourth bullet point, it says:

25 "Interest on the Haldia debt is being

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2 A. Yes.

3 Q. But Manbro and Parkwood understood,

4 sir, that there was a risk that it could be

5 completely wiped out due to the lenders taking

6 over Haldia in -- as of 2003, correct?

7 A. Yes.

8 Q. And was there any assessment of how

9 significant that risk was to Manbro Energy and

10 Parkwood, as well as Haldia?

11 A. I don't believe there would have been

12 an assessment of the risk.

13 Q. Needless to say, it was communicated

14 to Parkwood investor -- the investment committee

15 and Parkwood that this was not a good investment

16 for Manbro Energy, correct?

17 A. Yes.

18 Q. In the last paragraph, Mr. Ehrlich

19 says:

20 "Clearly this was not a good

21 investment, but the remaining stub probably

22 should be held since it is, A, illiquid; B,

23 could be sold only at a steep discount from

24 present NAV; and C, that NAV probably is

25 well undervalued."

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2 paid partly by the Chatterjee group of

3 funds, but Chatterjee's management company

4 is paying the bulk."

5 Do you see that?

6 A. Yes.

7 Q. You understood that Dr. Chatterjee

8 and his affiliated entities were personally

9 paying the bulk of the interest on Haldia's

10 debt, not requiring those payments from WPPE and

11 other funds, correct?

12 MR. MCDONALD: Objection.

13 A. That is what the memo indicates, yes.

14 BY MR. WEITZMAN:

15 Q. You'd also agree with me, sir, that

16 Dr. Chatterjee -- there was no legal requirement

17 at this time for him to do all this work to save

18 Haldia, correct?

19 MR. MCDONALD: Objection.

20 A. Part of the -- it's all about who and

21 why do you want to invest with people who have

22 skin in the games is because they have a

23 personal interest, and so this would have been

24 one of the reasons that we were willing to take

25 the risk in such an illiquid, risky investment

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|---|--|
| <p style="text-align: right;">Page 214</p> <p>1 CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2 because we knew that he would do whatever he</p> <p>3 could to benefit the company, and then we would</p> <p>4 benefit because of our investment side by side</p> <p>5 with him.</p> <p>6 MR. WEITZMAN: Move to strike.</p> <p>7 BY MR. WEITZMAN:</p> <p>8 Q. I'm going to ask you again the</p> <p>9 question that I want answered, which is</p> <p>10 Dr. Chatterjee had no legal requirement to</p> <p>11 invest his time and resources, personal</p> <p>12 resources, to try to save Haldia, correct?</p> <p>13 MR. MCDONALD: Objection to asking</p> <p>14 the witness for a legal conclusion. If</p> <p>15 you're asking him what the contract says,</p> <p>16 the contract will speak for itself.</p> <p>17 But go ahead and answer it if you</p> <p>18 can, Mr. Smith.</p> <p>19 A. I have no idea.</p> <p>20 BY MR. WEITZMAN:</p> <p>21 Q. There was nothing in the fund</p> <p>22 documents for WPPE that required Chatterjee to</p> <p>23 invest his personal assets above and beyond his</p> <p>24 investment in WPPE in an effort to improve</p> <p>25 Haldia, correct?</p> | <p style="text-align: right;">Page 215</p> <p>1 CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2 MR. MCDONALD: Same objection.</p> <p>3 A. There's nothing that I'm aware of,</p> <p>4 no.</p> <p>5 MR. WEITZMAN: Okay. Let's go to</p> <p>6 Tab 36 and mark this as Exhibit 19.</p> <p>7 (DEFENDANTS' EXHIBIT 19 MARKED</p> <p>8 FOR IDENTIFICATION at 2:47 p.m.)</p> <p>9 BY MR. WEITZMAN:</p> <p>10 Q. Do you recognize this document?</p> <p>11 A. I do not recognize this document.</p> <p>12 Q. Do you recognize this as a document</p> <p>13 that Manbro produced to the defendants?</p> <p>14 A. I don't actually recognize this as a</p> <p>15 document that Manbro produced for the</p> <p>16 defendants, but I'm willing to accept that.</p> <p>17 MR. MCDONALD: We'll stipulate to</p> <p>18 that.</p> <p>19 BY MR. WEITZMAN:</p> <p>20 Q. Do you recognize this as a</p> <p>21 communication from Chatterjee, Winston Partners,</p> <p>22 to Parkwood regarding the net asset value of the</p> <p>23 investment as of October 2006?</p> <p>24 MR. MCDONALD: I'll just say are you</p> <p>25 referring to the first page? Because it's</p>                             |
| <p style="text-align: right;">Page 216</p> <p>1 CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2 a multi-page document, at least in my</p> <p>3 binder.</p> <p>4 MR. WEITZMAN: I am referring to the</p> <p>5 first page.</p> <p>6 A. Yes.</p> <p>7 (Off the written record.)</p> <p>8 BY MR. WEITZMAN:</p> <p>9 Q. So this is a collection, sir, of net</p> <p>10 asset value disclosures dated from 2006 through</p> <p>11 2017, correct? You can scan through the pages.</p> <p>12 A. Yes.</p> <p>13 Q. And each of these was kept and</p> <p>14 maintained by Manbro in the normal course,</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. In the second paragraph on the first</p> <p>18 page, it states that:</p> <p>19 "The unaudited net asset value of</p> <p>20 your investments, after accrual of your</p> <p>21 distribution management fees and expenses,</p> <p>22 is as follows."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. And, in fact, on each one of these</p>   | <p style="text-align: right;">Page 217</p> <p>1 CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2 pages it references an unaudited net asset value</p> <p>3 of the investment. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. So between 2006 and 2017, Chatterjee</p> <p>6 disclosed to Parkwood every year at least that</p> <p>7 there was an unaudited net asset value for the</p> <p>8 investment, correct?</p> <p>9 MR. MCDONALD: Objection.</p> <p>10 A. Yes.</p> <p>11 BY MR. WEITZMAN:</p> <p>12 Q. And what did it mean to you or to</p> <p>13 Parkwood that the net asset value -- these net</p> <p>14 asset value reports were unaudited?</p> <p>15 A. We would have preferred audited, but</p> <p>16 the unaudited net asset value wouldn't have</p> <p>17 mattered that much.</p> <p>18 Q. At any point in time prior to 2017,</p> <p>19 so between 2006 and 2017, did Parkwood or Manbro</p> <p>20 ever dispute the calculation of net asset value</p> <p>21 with defendants?</p> <p>22 A. No.</p> <p>23 Q. At any time between 2006 and 2017,</p> <p>24 did Parkwood or Manbro ever tell defendants that</p> <p>25 they believed the net asset value calculation</p> |



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1 CONFIDENTIAL - BRADLEY S. SMITH  
2 Parkwood and Manbro regarding whether to sign  
3 this release?  
4 A. There were discussions between  
5 Parkwood and Manbro on whether to sign this  
6 release.  
7 Q. And what was the reason why Manbro  
8 decided not to sign this release? Without  
9 revealing any privileged legal advice, what was  
10 the reason?  
11 A. We did not have adequate comfort with  
12 the valuation.  
13 Q. When you say the valuation, are you  
14 referring to the valuation of WPPE --  
15 A. The valuation of the Haldia shares.  
16 Q. Did Manbro receive advice from  
17 outside counsel regarding this release at any  
18 point in time prior to -- in or about 2017 I  
19 mean?  
20 A. I don't remember.  
21 Q. Okay. It states here in the release:  
22 "I" -- and then there's a blank -- "a  
23 partner in Winston Partners Private Equity  
24 LLC hereby confirm that following my return  
25 of this acknowledgement in payment of the

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2 A. No. Parkwood did not sign the  
3 release because we weren't comfortable with the  
4 valuation. We didn't know how the shares were  
5 valued. A release from an investment manager is  
6 not a normal request. We get distributions all  
7 the time without such a release request.  
8 Q. Are you aware -- this release would  
9 have been two-directional; the fund would  
10 release any claims against the investor and  
11 vice-versa, correct?  
12 A. Yes.  
13 Q. Fair to say that the -- one of the  
14 concerns that Manbro and Parkwood had was they  
15 wanted to preserve their ability to sue  
16 Dr. Chatterjee and the fund advisor?  
17 MR. MCDONALD: Objection.  
18 You can answer.  
19 A. At this particular point in time, we  
20 were not thinking about any of that. At this  
21 particular point in time, we were just looking  
22 for some type of comfort on the valuation, how  
23 was this price determined. That was all we were  
24 looking for.  
25 BY MR. WEITZMAN:

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1 CONFIDENTIAL - BRADLEY S. SMITH  
2 amount represented in the funds March 31,  
3 2017 NAV statement, neither the fund nor  
4 the investor shall hold any claims past,  
5 present, or future against the other."  
6 Who did you understand -- who did  
7 Manbro understand the fund to refer to?  
8 MR. MCDONALD: Objection to the  
9 extent that that calls for privileged  
10 advice or privileged communications. Do  
11 you want to put a time frame on that, Avi?  
12 BY MR. WEITZMAN:  
13 Q. In May of 2017, who did Manbro  
14 understand the fund to refer to?  
15 MR. MCDONALD: Objection.  
16 You can answer.  
17 A. Manbro wouldn't have -- Manbro would  
18 have in some sense thought that it was the  
19 entire Chatterjee Group; that this wasn't just  
20 one particular fund, but this is -- yeah.  
21 BY MR. WEITZMAN:  
22 Q. And is it fair to say that Parkwood  
23 was concerned that this release would release  
24 the entire Chatterjee Group and therefore did  
25 not sign the release?

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1 CONFIDENTIAL - BRADLEY S. SMITH  
2 Q. I understand that. What I'm trying  
3 to figure out is what did you understand this  
4 release to be requesting? I'm not asking why.  
5 What did Parkwood understand -- you  
6 as the designee, who did you -- let me just  
7 finish. Who did you -- sorry.  
8 Who did you -- as Parkwood's  
9 designee, who did Parkwood believe that this  
10 release would extend to?  
11 MR. MCDONALD: I object to that  
12 question unless it's framed as before any  
13 advice or discussions with outside counsel.  
14 MR. WEITZMAN: It is.  
15 BY MR. WEITZMAN:  
16 Q. In May -- let me rephrase again. Let  
17 me be very clear.  
18 Without revealing the substance of  
19 any legal advice, in May 2017 when Parkwood  
20 received this requested release, who did it  
21 understand the release was requested to extend  
22 to?  
23 A. I'm still -- I'm not following your  
24 question.  
25 Q. Without revealing the substance of

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2 action?

3 A. Yes.

4 Q. Why?

5 A. Because we feel like to some extent

6 that the other shareholders were treated

7 unfairly and that they should have a right to

8 the full facts.

9 Q. Does Manbro realize it -- does

10 Manbro -- I'm sorry.

11 Does Manbro understand what its

12 responsibilities are in connection with serving

13 as class representative?

14 A. Yes.

15 MR. MCDONALD: I'll object to that.

16 You're getting into a probably privileged

17 area, Counsel. If there's a question that

18 you want to ask, more targeted perhaps,

19 that would help.

20 BY MR. WEITZMAN:

21 Q. What, if anything, is Manbro doing

22 different from Parkwood? What is Manbro doing

23 to supervise counsel and supervise this

24 litigation?

25 MR. MCDONALD: I'll object to that.

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1 CONFIDENTIAL - BRADLEY S. SMITH

2 his trustee to be sued.

3 Q. And has that case been resolved?

4 A. The case has been resolved.

5 Q. Were you involved in supervising that

6 case?

7 A. I was involved and at some high

8 level, yes.

9 Q. Were you -- was anybody from Parkwood

10 Trust deposed in that case?

11 A. No.

12 Q. Have there ever been any civil

13 enforcement actions or civil investigations or

14 criminal investigations, for that matter, of

15 anybody at Manbro?

16 A. No. I don't think there has been any

17 of that against anybody at Parkwood.

18 Q. Have Manbro, Parkwood, or any of

19 their employees ever been subject to any

20 sanction by a court in any legal action?

21 A. Not that I'm aware of.

22 Q. Were there any SEC investigations of

23 Manbro or its principals at any point in time,

24 to your knowledge?

25 A. No.

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2 You can answer.

3 A. I'm not sure Manbro's doing anything.

4 BY MR. WEITZMAN:

5 Q. Has Parkwood ever been a defendant in

6 a lawsuit?

7 A. Not that I'm aware of.

8 Q. Are you aware of that lawsuit in 2019

9 in West Palm Beach filed by Sea Breeze Building

10 against Parkwood Trust Company?

11 A. That was a lawsuit against a trust, a

12 Parkwood Trust Company. It really wasn't a

13 lawsuit against Parkwood. It was a lawsuit

14 against the trust.

15 Q. What was -- sorry, I didn't mean to

16 cut you off. Go ahead.

17 A. The -- we have a lot of generation

18 exempt trusts. The particular trust in question

19 was holding the real estate that was to be

20 purchased and built by the beneficiary. The

21 beneficiary had a dispute with his builder as to

22 the quality of the workmanship.

23 Because we were trustee of the trust,

24 we got brought into the dispute hoping that the

25 beneficiary would cave because he didn't want

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2 Q. Has Manbro ever sought litigation

3 funding from a third party to finance this

4 lawsuit?

5 A. No.

6 Q. Did Manbro ever consider seeking

7 litigation funding to finance this lawsuit?

8 A. No.

9 Q. Did Manbro ever consider -- let me

10 rephrase that.

11 Did Parkwood ever seek litigation

12 funding to finance this lawsuit from a third

13 party?

14 A. No.

15 Q. And did Parkwood ever consider

16 selling off all or part of its claim to a third

17 party?

18 A. No.

19 Q. Are you familiar with the entity

20 called Contrarian Capital?

21 A. I believe they are one of our

22 managers or were at one time.

23 Q. And was there any discussion, to your

24 knowledge, with Contrarian Capital regarding

25 financing the lawsuit or selling a portion of

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2 C E R T I F I C A T E

3

4 STATE OF MICHIGAN )

5 ) ss.:

6 COUNTY OF OAKLAND )

7

8 I, Paula S. Raskin, a Notary Public

9 within and for the State of Michigan, do

10 hereby certify:

11 That BRADLEY S. SMITH, the witness

12 whose deposition is hereinbefore set forth,

13 was duly sworn by me and that such

14 deposition is a true record of the

15 testimony given by such witness.

16 I further certify that I am not

17 related to any of the parties to this

18 action by blood or marriage; and that I am


19 in no way interested in the outcome of this

20 matter.

21 IN WITNESS WHEREOF, I have hereunto

22 set my hand April 23, 2021.

23

24 

25 Paula S. Raskin

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22

23 (Exhibits attached to transcript.)

24

25

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2 E X A M I N A T I O N S

3

4 WITNESS PAGE

5 BRADLEY S. SMITH

6 EXAMINATION BY MR. WEITZMAN: 6

7

8

9 E X H I B I T S

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1 ERRATA SHEET

2 Case Name:

3 Deposition Date:

4 Deponent:

|    |     |     |           |             |        |
|----|-----|-----|-----------|-------------|--------|
| 5  | Pg. | No. | Now Reads | Should Read | Reason |
| 6  | —   | —   | —         | —           | —      |
| 7  | —   | —   | —         | —           | —      |
| 8  | —   | —   | —         | —           | —      |
| 9  | —   | —   | —         | —           | —      |
| 10 | —   | —   | —         | —           | —      |
| 11 | —   | —   | —         | —           | —      |
| 12 | —   | —   | —         | —           | —      |
| 13 | —   | —   | —         | —           | —      |
| 14 | —   | —   | —         | —           | —      |
| 15 | —   | —   | —         | —           | —      |
| 16 | —   | —   | —         | —           | —      |
| 17 | —   | —   | —         | —           | —      |
| 18 | —   | —   | —         | —           | —      |
| 19 | —   | —   | —         | —           | —      |
| 20 | —   | —   | —         | —           | —      |

21

22 Signature of Deponent

23 SUBSCRIBED AND SWORN BEFORE ME

24 THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021.

25 (Notary Public) MY COMMISSION EXPIRES: \_\_\_\_\_